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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

For Online Publication Only

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MARC DESIR,

Plaintiff,

-against-

ORDER

22-CV-7441 (JMA) (SIL)

U.S. NATIONAL BANK ASSOCIATION,
MEADOWBROOK FINANCIAL MORTGAGE
BANKERS CORP., ROBERTSON, ANSCHUTZ,
SCHNEID CRANE & PARTNERS, PLLC, and
OFFIT KURMAN, ATTORNEYS AT LAW,

Defendants.
-----X

AZRACK, United States District Judge:

Before the Court is the in forma pauperis (“IFP”) application filed by pro se plaintiff Marc Desir (“Plaintiff”). (ECF No. 4.) For the following reasons, the IFP application is denied without prejudice and with leave to renew upon completion of the AO 239 Long Form IFP application (“Long Form”) attached to this Order. Alternatively, Plaintiff may remit the \$402.00 filing fee.

The purpose of the IFP statute is to ensure that indigent persons have equal access to the judicial system. See Davis v. NYC Dep’t of Educ., No. 10-CV-3812, 2010 WL 3419671, at *1 (E.D.N.Y. Aug. 27, 2010) (citation omitted). To qualify for IFP status, the Supreme Court has long held that “an affidavit is sufficient which states that one cannot because of his poverty pay or give security for the costs [inherent in litigation] and still be able to provide himself and dependents with the necessities of life.” Adkins v. E.I. Du Pont De Nemours & Co., 335 U.S. 331, 339 (1948) (internal quotation marks omitted). The determination of whether an applicant qualifies for IFP status is within the discretion of the district court. DiGianni v. Pearson Educ., 10-CV-0206, 2010 WL 1741373, at *1 (E.D.N.Y. Apr. 30, 2010) (citation omitted). The court may dismiss a case

brought by a plaintiff requesting to proceed IFP if the “allegation of poverty is untrue.” 28 U.S.C. § 1915(e)(2)(A).

Plaintiff’s IFP application, filed together with the complaint, does not include sufficient information concerning Plaintiff’s financial position. Plaintiff reports that he has received income in the past twelve months, but he does not state the amount of income he has received or the amount he expects to receive in the future, as the form requires. (ECF No. 4 at ¶ 2(f).) Although Plaintiff indicates he has no money in cash or in an account, he reports regular monthly expenses of \$3,525.00. (*Id.* at ¶¶ 4, 6.) Further, Plaintiff reports that he has a wife¹ and two children who are dependent upon him for financial support, but he does not state how much he contributes towards that support apart from “\$1,000 (food only) in EBT/SNAP and HEAP benefits.” (*Id.* at ¶ 7.) Plaintiff wrote “N/A” in the space of the application that calls for any debts or other financial obligations. (*Id.* ¶ 8.)

As is readily apparent, Plaintiff’s application raises more questions than it answers. Because the Court finds that Plaintiff can best set forth his current financial position on the Long Form, his IFP application is denied without prejudice and with leave to renew on the Long Form within fourteen days from the date of this Order. Alternatively, Plaintiff may remit the \$402.00 filing fee. Plaintiff is warned that a failure to timely comply with this Order may lead to the dismissal of the complaint without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).²

¹ Notably, Plaintiff’s wife, Tiffany Desir, also filed a pro se complaint with an in forma pauperis application under Docket No. 22-CV-7484 (JMA) (JMW). That IFP application is virtually identical to the present application.

² Plaintiff is cautioned that there are no refunds of the filing fee, once paid, regardless of the outcome of the case. Accordingly, Plaintiff is well-advised to consider the substance of his complaint, the requirements of Federal Rule of Civil Procedure 8, and the subject matter jurisdiction of this Court. Plaintiff is encouraged to avail himself of the free resources provided by the Pro Se Legal Assistance

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444–45 (1962). The Clerk of Court shall mail a copy of this Order to the Plaintiff at his address of record.

SO ORDERED.

Dated: January 11, 2023
Central Islip, New York

/s/ (JMA)
JOAN M. AZRACK
UNITED STATES DISTRICT JUDGE

Program run by Hofstra Law School (the “Program”). Plaintiff may contact the Program by telephone at 631-297-2575 or by e-mail at PSLAP@hofstra.edu.

AO 239 (Rev. 01/15) Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form)

UNITED STATES DISTRICT COURT

for the

Plaintiff/Petitioner

v.

Defendant/Respondent

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)
)
)

Civil Action No. _____

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS (Long Form)

Affidavit in Support of the Application

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested. I declare under penalty of perjury that the information below is true and understand that a false statement may result in a dismissal of my claims.

Signed: _____

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date: _____

- For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly income amount during the past 12 months		Income amount expected next month	
	You	Spouse	You	Spouse
Employment	\$	\$	\$	\$
Self-employment	\$	\$	\$	\$
Income from real property (<i>such as rental income</i>)	\$	\$	\$	\$
Interest and dividends	\$	\$	\$	\$
Gifts	\$	\$	\$	\$
Alimony	\$	\$	\$	\$
Child support	\$	\$	\$	\$

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Retirement (<i>such as social security, pensions, annuities, insurance</i>)	\$	\$	\$	\$
Disability (<i>such as social security, insurance payments</i>)	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public-assistance (<i>such as welfare</i>)	\$	\$	\$	\$
Other (<i>specify</i>):	\$	\$	\$	\$
Total monthly income:	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

2. List your employment history for the past two years, most recent employer first. (*Gross monthly pay is before taxes or other deductions.*)

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (*Gross monthly pay is before taxes or other deductions.*)

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ _____

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
		\$	\$
		\$	\$
		\$	\$

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

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5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Assets owned by you or your spouse	
Home (Value)	\$
Other real estate (Value)	\$
Motor vehicle #1 (Value)	\$
Make and year:	
Model:	
Registration #:	
Motor vehicle #2 (Value)	\$
Make and year:	
Model:	
Registration #:	
Other assets (Value)	\$
Other assets (Value)	\$

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
	\$	\$
	\$	\$
	\$	\$

7. State the persons who rely on you or your spouse for support.

Name (or, if under 18, initials only)	Relationship	Age

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8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment <i>(including lot rented for mobile home)</i> Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No	\$	\$
Utilities <i>(electricity, heating fuel, water, sewer, and telephone)</i>	\$	\$
Home maintenance <i>(repairs and upkeep)</i>	\$	\$
Food	\$	\$
Clothing	\$	\$
Laundry and dry-cleaning	\$	\$
Medical and dental expenses	\$	\$
Transportation <i>(not including motor vehicle payments)</i>	\$	\$
Recreation, entertainment, newspapers, magazines, etc.	\$	\$
Insurance <i>(not deducted from wages or included in mortgage payments)</i>		
Homeowner's or renter's:	\$	\$
Life:	\$	\$
Health:	\$	\$
Motor vehicle:	\$	\$
Other:	\$	\$
Taxes <i>(not deducted from wages or included in mortgage payments) (specify):</i>	\$	\$
Installment payments		
Motor vehicle:	\$	\$
Credit card <i>(name):</i>	\$	\$
Department store <i>(name):</i>	\$	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$	\$

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Regular expenses for operation of business, profession, or farm (<i>attach detailed statement</i>)	\$	\$
Other (<i>specify</i>):	\$	\$
Total monthly expenses:	\$ 0.00	\$ 0.00

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☐ No If yes, describe on an attached sheet.

10. Have you spent — or will you be spending — any money for expenses or attorney fees in conjunction with this lawsuit? ☐ Yes ☐ No

If yes, how much? \$ _____

11. Provide any other information that will help explain why you cannot pay the costs of these proceedings.

12. Identify the city and state of your legal residence.

Your daytime phone number: _____

Your age: _____ Your years of schooling: _____

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